

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DARRIN A. GRUENBERG,

Plaintiff,

v.

DUSTIN KINGSLAND and
C/O JOHN DOE,

Defendants.

ORDER

11-cv-574-slc

In an order entered in this case December 3, 2011, Magistrate Judge Stephen L. Crocker denied plaintiff Darrin Gruenberg's second motion for appointment of counsel without prejudice. On December 21, 2011, plaintiff filed an appeal to the district court of Judge Crocker's denial of plaintiff's motion for appointment of counsel. On January 19, 2012, both parties provided their consent to the jurisdiction of the magistrate and District Judge William M. Conley entered an order referring this case to Magistrate Judge Crocker. Under 28 U.S.C. 636(b), parties have the option of asking the district court judge to review decisions on non-dispositive pre-trial motions to determine whether they were clearly erroneous or contrary to law. In cases where parties consent to the jurisdiction of a

magistrate judge, an appeal of a magistrate judge order is heard by the court of appeals for that district's circuit. Because plaintiff filed his appeal on December 21, 2011, well before he consented to the jurisdiction of Magistrate Judge Crocker, I will treat plaintiff's motion as a request for a district judge to review the magistrate's decision.

In support of his appeal of the magistrate's decision, plaintiff argues that the interest of justice would not be served by the continued refusal to appoint counsel. Plaintiff asserts that he is entitled to the appointment of counsel because he has no paper to write with, has only a single pen and is provided with one stamped envelope a week. Plaintiff explains that he was denied a legal loan for the 2012 year and lacks adequate legal loan funds or adequate legal supplies for the prosecution of his civil claim. I will deny plaintiff's appeal of the denial of his motion for appointment of counsel because there is no substantial ground for a difference of opinion on the question of whether plaintiff is entitled to appointment of counsel. Lack of supplies to conduct litigation is not a reason to appoint an attorney. Plaintiff appears to believe that because he is destitute or has overdrawn his legal loan account, he is entitled to appointed counsel who will bear the expense of his lawsuit. That is not the case. Plaintiff is in a position no different from a person who is not incarcerated and who has limited funds with which to file lawsuits in federal court. If the limitations on his funds prevent him from prosecuting his case with the full vigor he wishes to prosecute it, he is free to choose to dismiss it voluntarily and bring it at a later date, when he has the

funds to litigate. Plaintiff has chosen to continue with this suit at a time when he lacks funds. It would be improper to appoint counsel solely for the purpose of shifting plaintiff's costs to a lawyer. In sum, because I am satisfied that no error occurred in denying plaintiff's motion for appointment of counsel, his appeal of Judge Crocker's decisions on plaintiff's motion for appointment of counsel will be denied.

In his appeal to the district court, plaintiff includes a request to order the warden of Columbia Correction Institution to provide plaintiff legal loan funds or legal supplies. This request will be denied. In the December 3, 2011 order, Judge Crocker advised plaintiff that if he finds himself hindered in responding to defendants or to the court, then he is free to file a motion regarding his access to the courts. Judge Crocker further advised plaintiff that if he did file such a motion, he must explain in detail why his ability to pursue this case has been hampered and what specific tasks he wishes to accomplish regarding this lawsuit that are prevented by the lack of resources. To date, plaintiff has not explained what specifically he was trying to do and why he cannot do it.

ORDER

IT IS ORDERED that

1. Plaintiff Darrin Gruenberg's appeal to the district court of Judge Crocker's denial of his motion for appointment of counsel, dkt. #18, is DENIED.

2. Plaintiff's request for an order directing the warden of Columbia Correction Institution to provide plaintiff with legal loan funds or legal supplies, dkt. #18, is DENIED.

Entered this 30th day of January, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge